



complaint that are not entitled to the assumption of truth. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950-51 (2009). These include “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Id.* at 1949. Second, the Court must determine whether the complaint states a plausible claim for relief. *Id.* at 1950-51. This is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 1950. The plaintiff is required to plead facts that show more than the “mere possibility of misconduct.” *Id.* The Court must review the factual allegations in the complaint “to determine if they plausibly suggest an entitlement to relief.” *Id.* at 1951. When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff’s proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred. *Id.* at 1950, 1951-52.

### **The Complaint**

Plaintiff, Larry Terrell Howard, is a former inmate at Eastern Reception, Diagnostic and Correctional Center (“ERDCC”). He brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his civil rights by defendant, the Missouri Department of Corrections (“MDOC”).

Plaintiff claims that while he was incarcerated in August of 2017, he put an order in at the canteen at ERDCC to be filled prior to him being transferred to attend court in St. Louis County. He claims that when he returned to ERDCC several days later, he did not receive the items, nor were the items from the canteen placed in his property. Plaintiff claims that \$32.96 was removed from his inmate account to purportedly pay for the canteen items, and he was told that because he did not receive the items, the money would be reimbursed to him. Plaintiff alleges that the money has still not been reimbursed, over six months later. Plaintiff does not explain how the money was supposed to be reimbursed to him now that he is no longer incarcerated.

For relief in this action, plaintiff seeks \$18,000.

### Discussion

Plaintiff's claims are brought pursuant to 42 U.S.C. § 1983, and they are described as: "withholding funds," and "defrauding reimbursement," and "withholding wages." However, regardless as to how plaintiff characterizes defendant's purported behavior, his assertions allegedly refer to plaintiff's belief that MDOC failed to provide him with the \$32.96 worth of canteen supplies that he ordered in August of 2017 at ERDCC.

Unfortunately, plaintiff's complaint fails to state a claim against the Missouri Department of Corrections because an agency exercising state power is not a "person" subject to a suit under § 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 63 (1989). As such, this matter is subject to dismissal for failure to state a claim upon which relief may be granted.

Accordingly,


**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis [Doc. #3] is **GRANTED**.

**IT IS FURTHER ORDERED** that this action is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B).

**IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel [Doc. #2] is **DENIED AS MOOT**.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 20<sup>th</sup> day of June, 2018.

  
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JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE